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REPORT OF THE SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND PROTECTION OF MINORITIES ON ITS FORTY-SIXTH SESSION

Protection of the heritage of indigenous people

Note by the International Labour Office

1. Reference is made to the preliminary report of the Special Rapporteur of the Sub-Commission on this subject (E/CN.4/Sub.2/1994/31).

2. The ILO finds the draft principles and guidelines contained in the annex to her report, very positive, and is glad to support the effort to establish them. This effort develops concepts which are in simpler form in the Indigenous and Tribal Peoples Convention, 1989 (No. 169). It is therefore somewhat surprising that no mention was made of that Convention in the report.

3. Reference is made in Convention No. 169 to the need to promote "the full realization of the social, economic and cultural rights of these peoples with respect for their social and cultural identity, their customs and traditions and their institutions" (art. 2, para. 2 (b) of Convention No. 169). Article 4 (1) provides that "Special measures shall be adopted as appropriate for safeguarding the persons, institutions, property, labour, cultures and environment of the peoples concerned." Article 5 (a) provides that in applying the provisions of the Convention "the social, cultural, religious and spiritual values and practices of these peoples shall be recognized and protected". A number of other provisions provide for a similar approach of respect for the cultures of these peoples, and for providing them with the opportunity to develop their own cultures in accordance with their own wishes.

4. The concept of protecting the heritage of these peoples as their intellectual property is a very positive one, and it is to be hoped that these recommendations will prove fruitful.

5. Paragraph 16 of the draft principles and guidelines bears a considerable similarity to article 27 of Convention No. 169, which reads as follows:

> "1. Education programmes and services for the peoples concerned shall be developed and implemented in cooperation with them to address their special needs, and shall incorporate their histories, their knowledge and technologies, their value systems and their further social, economic and cultural aspirations.
>
> "2. The competent authority shall ensure the train ng of members of these peoples and their involvement in the formulation and implementation of education programmes, with a view to the progressive transfer of responsibility for the conduct of these programmes to these peoples as appropriate.
>
> "3. In addition, governments shall recognize the right of these peoples to establish their own educational institutions and facilities, provided that such institutions meet minimum standards established by the competent authority in consultation with these peoples. Appropriate resources shall be provided for this purpose."

6. Paragraph 18 of the draft principles is similar to article 28 of Convention No. 169, except that it does not provide as well for these peoples to attain fluency in the national language as well as their own indigenous language.

7. Paragraph 49 of the draft principles and guidelines reflects the provisions of article 31 of Convention No. 169, except that it is restricted to mass media while the Convention addresses all means of education and communication.

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